

there were certain filling stations, particularly described, which were not stores "belonging to, operated or controlled" by appellee.

The District Court of three judges (28 U. S. C. 380) entered a final decree permanently enjoining the enforcement of the Act, and the case comes here on appeal. In so deciding, the District Court sustained the first of the above-mentioned contentions of appellee, and also the second contention with respect to the denial of the equal protection of the laws, following its decision to the same effect in *Standard Oil Co. v. Fox*, 6 F. Supp. 494. That decision was reversed by this Court. *Fox v. Standard Oil Co.*, 294 U. S. 87. The District Court did not determine the third contention of appellee, as to its relation to certain gasoline stations, and that is the only question now sought to be presented to this Court. The judgment is reversed and the cause is remanded to the District Court, composed as above stated, in order that it may consider and decide that issue.

Reversed.

STANLEY v. PUBLIC UTILITIES COMMISSION.

APPEAL FROM THE SUPREME JUDICIAL COURT OF MAINE.

No. 551. Argued April 3, 1935.—Decided April 15, 1935.

In limiting the use of state highways for intrastate transportation for hire, the legislature reasonably may provide that carriers who have furnished adequate, responsible and continuous service over a given route from a specified date in the past shall be entitled to licenses as a matter of right, but that the licensing of those whose service over the route began later than the date specified shall depend upon the public convenience and necessity. P. 78.

133 Me. 91; 174 Atl. 93, affirmed.

APPEAL from a judgment overruling exceptions taken in the court below for the review of an order of the Public

Utilities Commission of Maine. The order denied in part the appellant's application for a certificate of public convenience and necessity authorizing him to operate motor vehicles as a common carrier, on certain designated highways.

Mr. Charles F. King for appellant.

Mr. Clyde R. Chapman for appellee.

PER CURIAM.

Chapter 259 of the Public Laws of the State of Maine of 1933 placed common carriers operating motor vehicles for the transportation of goods for hire, under the control of the Public Utilities Commission, and required them to obtain certificates of public convenience and necessity which, however, were to be granted as a matter of right in the case of carriers who had provided adequate, responsible and continuous service since March 1, 1932.

Appellant, John M. Stanley, applied to the Commission for a certificate to enable him to operate as a common carrier from Portland to Haines Landing in that State. Upon hearing, the Commission determined that he was entitled, as a matter of right, to a certificate for operation between Portland and Lewiston, but not north of the latter point, as it did not appear that he had supplied the described service north of Lewiston since March 1, 1932. The Commission found that there were several common carriers operating over all, or portions, of the route between Lewiston and Haines Landing, including those which were entitled to certificates as a matter of right, and denied appellant's application for that part of the route. Complaining that this determination deprived him of his property without due process of law and denied to him the equal protection of the laws, in violation of the Fourteenth Amendment of the Constitution of the United States, appellant obtained review by the Supreme Court

of the State, which overruled his exceptions and sustained the Commission's action. 133 Me. 91; 174 Atl. 93. The case comes here on appeal.

Appellant's contentions are without merit. No question as to interstate transportation is involved. In safeguarding the use of its highways for intrastate transportation, carriers for hire may be required to obtain certificates of convenience and necessity. *Packard v. Banton*, 264 U. S. 140, 144; *Stephenson v. Binford*, 287 U. S. 251, 264. In the exercise of this power, the legislature could determine, within reason, as of what period the service of carriers for hire over its highways did not impair their use or cause congestion, and require certificates for those seeking to supply additional transportation for a later period. The selection of any date would necessarily establish a distinction between service immediately before and after; but that, like similar selections of distances, weights and sizes, would not of itself prove that the choice was beyond the range of legislative authority. *Columbus & Greenville Ry. Co. v. Miller*, 283 U. S. 96, 101, 102; *Continental Baking Co. v. Woodring*, 286 U. S. 352, 370, 371; *Sproles v. Binford*, 286 U. S. 374, 388, 389. There is no ground for concluding that the legislature transgressed the bounds of permissible discretion in this case. The judgment is

Affirmed.

BERGER v. UNITED STATES.

CERTIORARI TO THE CIRCUIT COURT OF APPEALS FOR THE
SECOND CIRCUIT.

No. 544. Argued March 7, 1935.—Decided April 15, 1935.

1. Where an indictment charges a conspiracy of several persons and the conspiracy proved involves only some of them, the variance is not fatal. P. 81.
2. Where the proof shows two conspiracies, each fitting the single charge in the indictment, and each participated in by some but